315.

SUPREME COURT OF THE UNITED STATES.

No. 127.

WILLIAM E. WOODRUFF, PLAINTIFF IN ERROR,

vs.

FREDERICK W. TRAPNALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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J. & G. S. Gideon, printers.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the chief justice and associate judges of the supreme court of the State of Arkansas, [L. S.] greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of said State, before you, between William E. Woodruff and Frederick W. Trapnall, a manifest error hath intervened to the great damage of the said William E. Woodruff, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 29th day of July, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second year.

Attest: WM. FIELD, *Clerk*,
By A. H. RUTHERFORD,
Dep'y clerk.

Allowed by— THOMAS JOHNSON,
Chief justice of the supreme court of the State of Arkansas.

STATE OF ARKANSAS, *in the supreme court, sct:*

I, Luke E. Barber, clerk of the supreme court of the State of Arkansas, do hereby certify, that in obedience to the mandate of the within and foregoing writ of error, and the allowance thereof by the hon. Thomas Johnson, chief justice of said supreme court, I have made out and certified a full, true, and complete transcript of the record and proceedings of said supreme court in the case in said writ, which is hereto attached, and now openly sent to the Supreme Court of the United States, as by said writ it is commanded.

In testimony whereof I have hereunto set my hand, as clerk as aforesaid, and affixed the seal of said supreme court, at my office, [L. S.] in the city of Little Rock, this 11th day of October, A. D. 1847.

L. E. BARBER, *Clerk.*

THE STATE OF ARKANSAS,

In the supreme court, sct:

Be it remembered, that at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the first Monday, being the 5th day of July, in the year of our Lord one thousand eight hundred and forty-seven, and on the 28th day thereof, before the honorable Thomas Johnson, chief justice, and the honorable William Conway, B. judge, were the following proceedings, to wit:

WILLIAM E. WOODRUFF, plaintiff,
vs.
FREDERICK W. TRAPNALL, attorney for the State, defendant.

Writ of Mandamus.

Be it remembered that, heretofore, to wit, on Thursday, February 25th, A. D. 1847, at a term of our said supreme court, begun and held on the 5th day of January, A. D. 1847, were the following proceedings in said cause, to wit:

Filing Petition.

At this day comes the said petitioner, by his attorney, and it is ordered that he have leave to file his petition for a writ of mandamus, to be directed to Frederick W. Trapnall, as attorney for the State of Arkansas, in a certain case prosecuted to judgment in the circuit court of Pulaski county, by said State, against said petitioner and others, commanding him to receive payment of said judgment in certain bank notes, as stated in said petition, or show cause why he shall refuse to do so; and thereupon said petition is filed and submitted.

Order for Mandamus.

And thereupon, by consent of said attorney that such writ be issued, returnable to-morrow, it is ordered that the clerk of this court issue an alternative writ of mandamus, directed to the said Frederick W. Trapnall, as attorney for said State in said cause in said petition, commanding him to accept and receive, in payment of the judgment in said petition, the notes of the said bank, therein also stated, or that he show cause, on the 26th day of February inst., before this court, why he shall refuse to do so.

Petition for Mandamus.

And the said petition, so filed as aforesaid by the said William E. Woodruff, is in the following words, to wit:

ARKANSAS, *sct:*

To the honorable the supreme court of the State of Arkansas:

Your petitioner, William E. Woodruff, a citizen of the county of Pulaski, in said State, would respectfully represent: That heretofore,

to wit, on the 28th day of January, A. D. 1840, the State of Arkansas, by her attorney in that behalf, instituted an action of debt, in the Pulaski circuit court, against your petitioner, and his securities, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, upon his official bond as late treasurer of said State, for the recovery of a certain sum of money alleged to have been received by your petitioner as such treasurer, between the 27th day of October, 1836, and the 25th day of December, 1838, the term for and during which he continued to hold said office of treasurer, under the responsibility imposed by said bond; which said sum, so alleged to be in arrear and unaccounted for, had been retained by your petitioner, as he conceived he lawfully and justly might, in consequence of his having a cross demand again said State for a much larger amount than the sum so claimed by said State, in respect of which your petitioner claimed an offset. That your petitioner appeared to said action, and interposed his said defence, but the same was disallowed and adjudged insufficient, not because said State was not indebted to him in the sum claimed, but upon the ground that the debts were not mutual—the claim of said State being against your petitioner, jointly with his securities, and his cross claim being a demand due to him alone; and the defence of your petitioner, in consequence of the said technical rule of law being adjudged insufficient, such proceedings were had in said suit that said State afterwards, to wit, on the 13th day of June, 1845, by the consideration and judgment of said circuit court, recovered against your petitioner and his said securities the sum of $3,359 $\frac{33}{100}$ in damages, besides all her costs in and about said suit expended; which costs, as taxed, now amount to the sum of $49.65; which said judgment was afterwards, by this honorable court, on writ of error thereto sued, affirmed. All which, by the said record and proceedings in respect thereof remaining in this court, and which are prayed to be taken as part hereof, will more fully appear. That, by reason of the attorney general, previous to his election, having been of counsel for your petitioner in said cause, said circuit court, before the rendition of said judgment, according to the statute in such case made and provided, appointed Frederic W. Trapnall, esq., an attorney and counsellor of this court, attorney general pro tempore, to conduct and prosecute said suit in behalf of said State; and said Trapnall has from thence continued, and still acts, pursuant to said appointment, in such capacity, and performs the duties pertaining thereto. That said Trapnall, as such attorney, having ordered an execution to be issued upon said judgment, your petitioner, on the 24th day of February, 1847, at the county aforesaid, tendered and offered to pay to said Trapnall the sum of $3,755 $\frac{00}{100}$ in the notes issued by the Bank of the State of Arkansas, pursuant to the charter thereof, for the purpose of circulation, being the full amount of damages, interest, and costs now due on said judgment, in payment and discharge thereof; but said Trapnall, so being such attorney, then and there refused, and still refuses, to accept, receive, or receipt for said bank notes in payment of said judgment, alleging as the

only reason for such refusal, that your petitioner can only discharge said judgment by the payment thereof in lawful money of the United States, or in warrants issued by the treasurer of said State; whereas your petitioner insists that said State is, by the law of the land, bound to accept and receive payment of said judgment in the bank notes aforesaid.

And your petitioner further represents, that, ever since said tender was so made, he has continued to be, and still is, ready and willing to pay said judgment by the delivery of said bank notes; and he now brings the same into court here, and offers to deliver the same over to said Trapnall, as such attorney, in case he will accept and receive such notes in full payment and satisfaction of said judgment, as your petitioner insists he is legally bound to do. Wherefore, and inasmuch as your petitioner has no other specific legal remedy for the enforcement of his rights in the premises, he prays the court to make an order for the issuance of an alternative writ of mandamus, directed to said Trapnall, as such attorney, commanding him that he accept and receive the tender aforesaid, in payment and discharge of said judgment, or that he show good cause, on or before a day certain, to be fixed by the court, why he does not do so. And your petitioner will ever pray.

WATKINS & CURRAN,
Attorneys for Woodruff.

ARKANSAS, *sct:*

I, Wm. E. Woodruff, the petitioner named in the foregoing petition, do state on oath, that the facts therein contained are true.

WM. E. WOODRUFF.

Sworn to and subscribed, in open court, this 24th day of Feb., 1847.
Test: L. E. BARBER, *Clerk.*

And said records so referred to in said petition, and in the agreement of record, as hereafter stated, are in the following words, to wit:

Trans. on 1st writ of error.

STATE OF ARKANSAS, *in the supreme court:*

Be it remembered, that at a supreme court of the State of Arkansas, begun and held in and for said State, at the court house, in the city of Little Rock, on the fourth (4th) day of January, A. D. eighteen hundred and forty-one, it being the first Monday of said month, before the Hon. Daniel Ringo, chief justice, and the Hon. Townsend Dickinson, judge, on the 26th day of January, A. D. 1841, were the following proceedings in the case of—

WILLIAM E. WOODRUFF, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, plaintiffs, vs. THE STATE OF ARKANSAS, defendant.	Writ of error to the Pulaski circuit court.

Be it remembered, that heretofore, to wit, on the 24th day of April, A. D. 1840, the said plaintiffs sued out of the office of the clerk of the

supreme court a writ of error in this cause, in the following words, to wit:

In the supreme court: The State of Arkansas, to the clerk of the circuit court of Pulaski county, greeting:

Because in the record and proceedings, and also in the giving of judgment in a suit which was in said circuit court, before the Hon. Charles Caldwell, judge thereof, between the State of Arkansas, plaintiff, and William E. Woodruff, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, defendants, of a plea of debt, manifest error has intervened to the damage of the said defendants, as they allege: You are therefore commanded, that, if final judgment be therein given, you send to the supreme court, under your official seal, the record and proceedings aforesaid, together with this writ, on the first day of the next term of said supreme court of said State, which will be held on the first Monday of July, A. D. 1840, at the court house, in the city of Little Rock, in said State; that the record and proceedings aforesaid being inspected by said supreme court, it may cause to be done therein what according to law ought to be done; and that you return this writ under your official seal.

Witness Herndon Haralson, clerk of said supreme court, who has hereunto set his hand as such clerk, and affixed the seal of [L. S.] said supreme court, at office, this 24th day of April, A. D. 1840, and of the State the 4th year.

H. HARALSON, *Clerk*.
By JNO. H. HARALSON, *Dep'y clerk*.

And afterwards, to wit, on the twenty-fourth day of April, in the year aforesaid, the said plaintiffs sued out of the office of the clerk of said supreme court a writ of summons to hear errors, in the following words:

In the supreme court: The State of Arkansas, to the sheriff of Pulaski county, in said State, greeting:

Because in the record and proceedings, and in the giving of judgment in a suit which was in the circuit court of said county of Pulaski, before the judge thereof, between the State of Arkansas, plaintiff, and William E. Woodruff, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, defendants, of a plea of debt, as it is alleged by the said defendants, manifest error has intervened to their great damage; and it being proper that such error, if any, should be corrected, and speedy justice done, you are therefore commanded to summon the said State of Arkansas, that she appear before the said supreme court of the State of Arkansas, at the court house, in the city of Little Rock, in said State, on the first day of the next term of said supreme court, which will be held on the first Monday of July, A. D. 1840, to respond to a writ of error issued in said case, and show cause, if any she have, why said judgment

should not be reversed and altogether held for naught; and that you make due return of this writ.

In testimony whereof I have hereunto set my hand, and affixed the seal of my office, at the city of Little Rock, this 24th day of April, A. D. 1840, and of the State the 4th year.

[L. S.]

H. HARALSON, *Clerk*.
By JNO. H. HARALSON, *Deputy clerk*.

And afterwards, to wit, on the eleventh day of June, in the year eighteen hundred and forty, the clerk of the circuit court of Pulaski county, to whom the said writ of error was directed, made due return thereof, with the transcript of the record in said circuit court thereto attached; which said return is in the following words, to wit:

STATE OF ARKANSAS, *county of Pulaski, sct:*

I, Lemuel R. Lincoln, clerk of the circuit court in and for the county of Pulaski, do hereby certify, that I have executed this writ of error, by making a true and complete transcript of the record and proceedings in the case therein mentioned, and by sending up the same under my official seal, together with this writ, to the supreme court of the State of Arkansas.

In testimony whereof I have hereunto set my hand as clerk of said court, and affixed my seal of office, at Little Rock, this 1st day of May, A. D. 1840, and in the year of the State the fourth.

[L. S.]

LEMUEL R. LINCOLN, *Clerk*.
By CHAS. H. WAGNER, *Deputy clerk*.

And the transcript of the record attached to the writ of error, as aforesaid, and filed therewith, is in the following words, to wit:

Pleas before the Hon. Charles Caldwell, judge of the Pulaski circuit court, on the 28th day of March, A. D. 1840, in the following entitled case, to wit:

THE STATE OF ARKANSAS, plaintiff,
vs.
W. E. WOODRUFF, C. Ashley, E. Cross, T. Thorn, J. De Baun, J. Reider, S. C. Roane, P. T. Crutchfield, defendants. } Debt.

PULASKI COUNTY, *sct:*

In the Pulaski circuit court, to March term, A. D. 1840.

The State of Arkansas, by John J. Clendenin, her attorney, prosecuting in her behalf in the fifth judicial circuit of said State, complains of William E. Woodruff, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, defendants, of a plea of debt, that they render unto her the sum of three hundred thousand dollars, lawful money of the United States, which to her they owe, and from her they unjustly detain. For that, whereas, the said defendants heretofore, to wit, on the twenty-sev-

enth day of October, A. D. 1836, at Little Rock, Arkansas, to wit, at the county of Pulaski aforesaid, by their certain writing obligatory, sealed with their respective seals, the said James De Baun signed by the style of J. De Baun, and the said Peter T. Crutchfield by the style of P. T. Crutchfield, and bearing date the day and year aforesaid, (the original whereof is now deposited and on file in the office of the secretary of state of said State, where*fore* a true copy of said writing obligatory, duly certified by said secretary of state, is here now shown to the court,) jointly and severally, the said Woodruff as principal, and the said other defendants as securities, acknowledged themselves to be held and firmly bound unto James S. Conway, Governor of *shid* State of Arkansas, and his successors in office, in the penal sum of three hundred thousand dollars (above demanded) lawful money of the United States; for the payment of which, well and truly to be made and done, the said defendants then thereby bound themselves, their heirs, executors, and administrators; which said writing obligatory was and is subject to a certain condition there under written, whereby, after reciting that the said William E. Woodruff had been duly elected treasurer of the said State by the General Assembly of said State, for the term of two years, and until his successor should be elected and qualified, the condition of said writing obligatory was and is declared to be such, that if the said William E. Woodruff should faithfully perform all the duties then required, or which might be required, by law, to be done as treasurer of said State, then the said writing obligatory to be void and of none effect, otherwise to remain in full force and virtue. And the said plaintiff in fact saith, that the said Wm. E. Woodruff remained and continued in said office of treasurer of said State, and was and acted as the treasurer of said State, as in the condition of said writing obligatory mentioned, for a long space of time, to wit, from the twenty-seventh day of October, A. D. 1836, until the twenty-fifth day of December, A. D. 1838, and that during the said time that he, the said William E. Woodruff, remained and continued in the said office of treasurer aforesaid, to wit, on the first day of November, A. D. 1836, and on divers other days and times between that day and the said twenty-fifth day of December, A. D. 1838, he, the said Wm. E. Woodruff, had and received for and on the account of the said State of Arkansas, in his said capacity of treasurer of said State, divers sums of money, amounting in the whole to a large sum of money, to wit, to the sum of two thousand three hundred and ninety-five dollars and eighteen cents; yet the said Wm. E. Woodruff did not, in that respect, perform all the duties by law required by him to be done as such treasurer, but therein failed, in this, that he, the said Wm. E. Woodruff, did not make good answer for, or pay over the said sum of two thousand three hundred and ninety-five dollars and eighteen cents, so by him had and received for said State, and by him due to said State on the balance of his accounts as such treasurer, either to the said State or to his successors in office, the treasurer of said State, or to any other person or persons, bank or corporation, appointed or authorized by said State to receive the same, (although the said State

afterwards, to wit, on the twenty-eighth day of February, A. D. 1838, required the said Wm. E. Woodruff so to do,) but therein he, the said Wm. E. Woodruff wholly failed and made default, and, on the contrary, converted and disposed of the said sum of money to his own use, whereby, and by force of the statue in such case made and provided, the said Wm. E. Woodruff, in his capacity of treasurer of said State, became, and was indebted to, and liable [to] pay to the said State the said sum of two thousand three hundred and ninety-five dollars and eighteen cents, so by him retained and converted to his own use, as also the amount of twenty-five per centum per annum on said sum of money so by him as treasurer retained, and converted, and disposed of to his own use, from the twenty-sixth day of October, A. D. 1837 until paid. Nevertheless, the said defendants, although often requested so to do, hath not as yet, nor hath either of them, paid to the said State of Arkansas, or to any officer or person or persons by her authorized to receive the same, the sum of two thousand three hundred and ninety-five dollars and eighteen cents, the said sum which said Woodruff so became indebted in, to, and liable to pay to, the said State, nor any part thereof, nor the said sum of twenty-five per centum per annum, nor any part thereof; but to pay the same, or either, or any part of either, they have, and each of them hath hitherto, wholly refused, and they do, and each of them doth, still refuse, whereby the said plaintiff is damnified to the amount of the said sum of two thousand three hundred and ninety-five dollars and eighteen cents, with twenty-five per centum per annum thereon from the 26th October, A. D. 1837, until paid; and so the said writing obligatory became forfeited, and by force of the statute in such case made and provided, the right hath accrued to said State to sue therefor, upon the writing obligatory aforesaid, and demand and have of and from the said defendant, the said sum of three hundred thousand dollars above demanded. Yet the said defendants, although often requested, have not as yet, nor hath either of them, paid to the said plaintiff, nor to any other person or persons, bank or corporation, the said sum of money above demanded, or any part thereof, but so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff in the sum of five thousand dollars; and thereupon, by the attorney for the State, she brings suit, &c.

JOHN J. CLENDENIN, *Attorney for the State.*

STATE OF ARKANSAS,
County of Pulaski, ss:

The State of Arkansas, to the sheriff of the county of Pulaski, greeting: You are hereby commanded to summon William E. Woodruff, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, if they be found within your bailiwick, to appear before the judge of our circuit court of Pulaski county, at the court-house in the county aforesaid, on the first day of our next March term, at a court to be holden on the first Monday of March next, then and there to answer the State of Arkansas to a plea

of debt upon writing obligatory for $300,000, damages five thousand dollars, and that you make due return of this writ to our said court.

In testimony whereof I have hereunto set my hand as clerk of said circuit court, and affixed the seal of office this 28th day of January, 1840, and of the independence of the United States the sixty-fourth year.

[L. S.]

LEMUEL R. LINCOLN, *Clerk*,
By CHAS. H. WAGNER, *D. C.*

Executed in the city of Little Rock, 28th day of January, 1840, by reading to W. E. Woodruff, Chester Ashley, Thomas Thorn, Jas. De Baun, Jacob Reider, and Peter T. Crutchfield the contents of the within writ. Edw. Cross and Sam. C. Roane not to be found in my county.

JAS. LAWSON, JR., *Sheriff.*

Service $6.00, mileage 60—$6 60

Proceedings had on the 4th March, 1840.

THE STATE OF ARKANSAS, plaintiff,
vs.
WM. E. WOODRUFF, Edward Cross, Chester Ashley, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, defendants. } Debt.

On this day came the defendants by their attorney, and filed their prayer of oyer in this case.

March 18th, 1840.

STATE OF ARKANSAS, plaintiff,
vs.
WM. E. WOODRUFF, Chester Ashley, Edward Cross, Thos. Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and P. T. Crutchfield, defendants. } Debt.

On this day came the plaintiff by attorney, and granted oyer, by filing a certified copy of original bond in this case.

Know all men by these presents, that we, Wm E. Woodruff as principal, and Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, as securities, are held and firmly bound unto James S. Conway, Governor of the State of Arkansas, and his successors in office, in the penal sum of three hundred thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of the above obligation is such, that, whereas the said William E. Woodruff has been duly elected treasurer of the State of Arkansas by the General Assembly of said State for the term of two

years, and until his successor shall be elected and qualified. Now, therefore, if the said William E. Woodruff shall faithfully perform all the duties required, or which may be required, by law to be done, as treasurer of the State of Arkansas, then this obligation to be void and of no effect, otherwise to remain in full force and virtue.

Witness our hands and seals, at Little Rock, Arkansas, this 27th day of October, 1836.

WILLIAM E. WOODRUFF, [SEAL.]
CHESTER ASHLEY, [SEAL.]
EDWARD CROSS, [SEAL.]
THOMAS THORN, [SEAL.]
J. DE BAUN, [SEAL.]
JACOB REIDER, [SEAL.]
SAM. C. ROANE, [SEAL.]
P. T. CRUTCHFIELD. [SEAL.]

Signed, sealed, and delivered in the presence of—

EXECUTIVE OFFICE, *Little Rock*,
27th October, 1836.

I approve the within bond as sufficient.

J. S. CONWAY.

I, Robert A. Watkins, secretary of state of the State of Arkansas, do hereby certify, that the foregoing is a true copy from the original now on file in the office of the secretary of state.

In testimony whereof, I have hereunto set my hand and the seal of office, at Little Rock, Arkansas, this 27th day of January, A. D. 1840. [SEAL.]

R. A. WATKINS, *Secretary of State*.

SECRETARY'S OFFICE, *Little Rock, Arkansas:*

Proceedings had on the 23d March, 1840.

STATE OF ARKANSAS, plaintiff,
vs.
WILLIAM E. WOODRUFF, C. Ashley, E. Cross, Thos. Thorn, J. De Baun, Jacob Reider, S. C. Roane, and P. T. Crutchfield, defendants. } Debt.

On this day came the defendants, by their attorney, and filed their first, second, and third pleas in this case.

In the Pulaski circuit court, at the March term, A. D. 1840.

WILLIAM E. WOODRUFF, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, defendants, } Action of debt.
adsm.
THE STATE OF ARKANSAS, plaintiff.

And the said defendants, William E. Woodruff, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, by their attorneys, Ashley and Watkins, come and defend the wrong and injury, when, &c., and crave oyer of the writing obligatory in the declaration in this case mentioned, and it is read to them; and they crave oyer of the conditions there underwritten, and they are read to them; a certified copy of which said writing obligatory, and the conditions there underwritten, hath been, by the said plaintiff, filed in the court here, and by the said defendants accepted as the grant of their prayer of oyer in this behalf. And, as to the said supposed breach of the said conditions unto the said writing obligatory underwritten in the said declaration suggested and alleged, the said defendants say, that the said plaintiff ought not to have or maintain her aforesaid action thereof against them, because they say that the said William E. Woodruff, treasurer of the State of Arkansas aforesaid, after the making of the said writing obligatory, and after he had received the said moneys in the said suggestion of breach mentioned, and before the commencement of this suit, to wit, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and thirty-seven, at Little Rock, in the county of Pulaski aforesaid, well and truly accounted for and paid over the said sum of two thousand three hundred and ninety-five dollars and eighteen cents, received by the said William E. Woodruff as treasurer as aforesaid; and of this the said defendants put themselves upon the country, &c. And for a further plea in this behalf, by leave of the court here for that purpose first had and obtained, as to the said supposed breach of the said conditions under the said writing obligatory underwritten, in the said declaration suggested and alleged, the said defendants say that the said plaintiff ought not to have and maintain her aforesaid action thereof against them, because they say, as to the sum of two thousand one hundred dollars and forty-three cents, penal of the said sum of two thousand three hundred and ninety-five dollars and eighteen cents, the said William E. Woodruff, as treasurer of the said State of Arkansas aforesaid, from the twenty-seventh day of October, A. D. 1836, until the thirty-first day of October, A. D. 1837, and on divers other days and times between the said last mentioned days, received from divers individuals divers sums of money, amounting, in the whole, to a large sum of money, to wit, the sum of twenty-one thousand four dollars ($21,004 $\frac{35}{100}$) and thirty-five cents, under and by virtue of the then existing law of the land, for the redemption of lands which had been sold and stricken off to the said State and late Territory of Arkansas for the non-payment of taxes due thereon; and the said last mentioned sum of money the said William E. Woodruff, treasurer as aforesaid, accounted and made good answer for in manner as follows, that is to say, the said William E. Woodruff, treasurer as aforesaid, on the said 31st day of October, A. D. 1837, and on divers days between that day and the said 25th day of December, A. D. 1838, stood chargeable, as such treasurer, with the sum of $18,903 92 parcel thereof, and dis-

bursed the same on divers days between the said 27th day of October, A. D. 1836, and the said 25th day of December, A. D 1838, in payment of warrants drawn upon the treasury in pursuance of law; and the said William E. Woodruff, treasurer as aforesaid, in the settlement of his accounts as such treasurer, on the said 31st day of October, A. D. 1837, retained the said sum of $2,100 43 parcel and residue of the said sum of $21,004 35, being commissions, at the rate of ten per centum, by law allowed to the said treasurer upon the said sum of $21,004 35, so by him, as aforesaid, received for the redemption of lands; which settlement of accounts was by Elias N. Conway, then auditor of the State of Arkansas, acting and before then duly elected, commissioned, and qualified as such auditor, audited and allowed in due form of law, to wit, on the 31st day of October, A. D. 1837, at the said county of Pulaski. And, as to the said sum of $294 75, parcel and residue of the said sum of $2,395 18, that, under and by virtue of an act of the General Assembly of the State of Arkansas, approved October 29th, 1836, entitled an act authorizing the State treasurer to receive the surplus revenue due and coming to the State under an act of Congress approved June 3d, 1836, the treasurer of said State was authorized and required to receive on deposite from the Secretary of the Treasury of the United States all such sums of money as the State of Arkansas might be entitled to receive as her dividend of the surplus revenue of the United States under the provisions of the act of Congress, approved the 23d day of June, eighteen hundred and thirty-six, entitled "an act to regulate the deposites of the public money," and to sign all and every receipt, certificate, and obligation that should be presented by the Secretary of the Treasury of the United States, so as fully to comply with the requisitions of the thirteenth section of the said act of Congress, and so forth.

And that on divers days, between and after the passage of the said last mentioned act of the General Assembly of the State *of the State* of Arkansas, and the said 31st day of October, A. D. 1837, under and by virtue, and in pursuance of the said act of the General Assembly, the said William E. Woodruff, treasurer as aforesaid, received divers transfer drafts from the Secretary of the Treasury of the United States, amounting in the aggregate to the sum of $286,757 49, which said transfer drafts the said William E., treasurer as aforesaid, diligently proceeded to collect and receive the proceeds thereof, at and from divers points and places, as well out of as within the limits of this State, and in so collecting and receiving the proceeds of the same the said William E. Woodruff, treasurer as aforesaid, necessarily and unavoidably expended a certain portion thereof, to wit, the sum of $595; and the said William E. Woodruff, treasurer as aforesaid, did well and truly account and make good answer for, and pay over the said sum of $286,757 49, in manner as follows, that is to say, after the passage of the said act of assembly, and before the 31st day of October, A. D. 1837, at the said county of Pulaski, the said William E. Woodruff, treasurer as aforesaid, deposited in specie and bank notes, in the Bank of the State *of the State* of Arkansas, in the manner and within the

time prescribed by law, $286,162 49, parcel of the said last mentioned sum of money, of which said sum of $595, residue of the said sum of $286,757 49, the said sum of $294 75 is parcel, so as aforesaid, by the said William E. Woodruff, necessarily and unavoidably expended in the collecting and receiving the proceeds of the said transfer drafts from the Secretary of the Treasury of the United States on account of the proportion of the surplus revenue of the United States coming to the State of Arkansas as aforesaid. Which said two sums of money, to wit, the sum of $2,100 43, and the sum of $294 75, amount together to the said sum of $2,395 18, which is the same money, and no other, mentioned in the said supposed breach of the said conditions under the said writing obligatory written, in this behalf most wrongfully suggested. All of which matters and things in this said second plea mentioned the said defendants are ready to verify; wherefore they pray judgment, if the said plaintiff ought to have or maintain her aforesaid action thereof against them, &c.

And for a further plea in this behalf, by leave of the court here for that purpose first had and obtained, the said defendants say, that the said plaintiff ought not to have or maintain her aforesaid action thereof against them, because they say, that at the time of the commencement of this suit there was due and owing, from the said William E. Woodruff, treasurer as aforesaid, to the said plaintiff, when the said writing obligatory by the condition thereof, a certain sum of money, to wit, the sum of $2,395 18, to wit, at the county of Pulaski aforesaid; and the said defendants further say, that the said plaintiff, before and at the time of the commencement of this suit, was and still is indebted to the said William E. Woodruff, late treasurer of said State of Arkansas, in a much larger sum of money than the money so due and owing from the said William E. Woodruff, late treasurer aforesaid, to the said plaintiff, upon the said writing obligatory, that is to say, in the sum of $4,700 07, of lawful money of the United States, for the work and labor, care and diligence, of the said William E. Woodruff, late treasurer as aforesaid, by the said Woodruff, his servants, and agents, and for divers journeys and travellings before that time done, perform and bestowed, in and about the business of the said plaintiff, and for the said plaintiff, and at her special instance and request; and for divers reasonable commissions and compensations by the said plaintiff before that time due and owing to the said William E. Woodruff, late treasurer as aforesaid, for the work and labor, care, diligence, and attendance of the said William E. Woodruff, in and about the collecting and receiving and transportation of divers large sums of money, of and for the said plaintiff, and at her like special instance and request; and for money by the said William E. Woodruff, late treasurer as aforesaid, before that time lent and advanced to, and paid, laid out, and expended for the said plaintiff, and at her like special instance and request; which said sum of money, so due and owing from the said William E. Woodruff, late treasurer as aforesaid, is wholly unpaid, and exceeds the said sum of money so due and owing from the said William E. Woodruff,

late treasurer as aforesaid, to the said plaintiff, by virtue of the said condition of the said writing obligatory; and which said sum of money, so due and owing from the said plaintiff to the said William E. Woodruff, late treasurer as aforesaid, or so much thereof as shall be necessary in this behalf, they, the said defendants, are ready and willing, and offer to set off and allow against the said sum of money so remaining due and payable by the condition of the said writing obligatory, according to the form of the statute in such case made and provided; and this the said defendants are ready to verify; wherefore, they pray judgment, if the said plaintiff ought to have or maintain her aforesaid action thereof against them, &c.

ASHLEY & WATKINS,
Attorneys for Defendants.

Proceedings had on the 24th March, 1840.

STATE OF ARKANSAS, plaintiff,
vs.
WILLIAM E. WOODRUFF, C. Ashley, E. Cross, Th. Thorn, J. De Baun, J. Reider, S. C. Roane, P. T. Crutchfield, defendants.

On this day came the parties, by their attorneys, and the said plaintiff filed issue to the defendants' first plea, demurred to the second plea, and filed his replication to the third plea.

Pulaski circuit court, *March term*, 1840.

STATE OF ARKANSAS
vs.
WILLIAM E. WOODRUFF and others.

And the said plaintiff, by the attorney for the State, as to the said plea of the said defendants by them to said breaches of said condition in said declaration alleged and assigned, first above pleaded, and whereof the said defendants put themselves upon the country, by the said attorney prosecuting, doth the like.

And the said plaintiff as to said plea of said defendants by them to said breach of said condition in said declaration assigned and alleged, second above pleaded, says, that the said plea second above pleaded, and the matters therein contained as the same are above pleaded, are not sufficient in law to preclude the said plaintiff upon the breach aforesaid, her action as aforesaid, for the damages as aforesaid against them, the said defendants, from having and maintaining; and therefore by her said attorney she doth demur thereto, and for causes of demurrer assigns:

First. That the said second plea is insufficient in this, that the said William E. Woodruff, as treasurer as aforesaid, was not at the time, when, &c., in said plea mentioned by him, authorized and allowed to retain the sum of $2,100 43 in said plea mentioned, being the amount of ten per centum as commission on said moneys, which had been, as

in said plea alleged, received for the redemption of lands sold and stricken off to said State and Territory for non-payment of taxes; nor was he at the said time, when, &c., authorized and allowed by law to retain any part or portion of said sum of $2,100 43, so by him, as in said second plea alleged, retained for such commission, as is therein alleged, but that such retainer thereof was contrary to law at the said time, when, &c., and still is contrary to law.

Second. That the said second plea is also insufficient in this, that the said William E. Woodruff, as treasurer as aforesaid, was not authorized by law to expend and lay out the said sum of $294.75, parcel of said surplus revenue, or any part thereof, in manner and form as the same was by him laid out and expended, as is in said second plea above alleged, in the collecting and receiving the proceeds of the said transfer drafts therein mentioned, and this the said State is ready to verify. Therefore, and inasmuch as the said breach of said condition by her above alleged remains by said second plea wholly unanswered, the said State prays judgment for the penalty of said bond, to be satisfied by the payment of the damages by her sustained as aforesaid. And the said plaintiff as to said plea of said defendants, by them to said breach of said condition thirdly above pleaded, says, that she ought not, by reason of any thing by them in said third plea alleged, to be barred from having and maintaining, upon said breach of said condition, her action thereof aforesaid, against the said defendants, because she says that the said plaintiff was not before and at the commencement of this suit, nor thence hath been, nor now is, indebted to said defendant, William E. Woodruff, late treasurer, &c., in said sum of 4,700.07 in said third plea mentioned, in any part or portion thereof, as is in said third plea alleged, or in any other sum or sums of money whatever, in manner and form as in said third plea is alleged; and of this the said plaintiff, by the attorney for the State, puts himself upon the country.

J. J. CLENDENIN, *Att'y for the State.*

Proceedings had on the 27th March, 1840.

STATE OF ARKANSAS, plaintiff,
vs.
WILLIAM E. WOODRUFF, C. Ashley, J. De Baun, J. Reider, E. Cross, G. Thorn, Sam. C. Roane, P. T. Crutchfield, defendants. } Debt.

On this day came the parties, by their attorneys, and the defendant joined issue to the plaintiff's replication to the defendants' third plea.

In the Pulaski circuit court, at March term, A. D. 1840.

WILLIAM E. WOODRUFF, and others, defendants, adsm.
THE STATE OF ARKANSAS, plaintiff. } Action of debt.

And as to the replication of the said plaintiff to the said third plea of the said defendant, wherein the said plaintiff prays that the same may be inquired of by the country, the said defendants do the like, &c.

ASHLEY & WATKINS,
Attorney for defendants.

Proceedings had on the 28th March, 1840.

STATE OF ARKANSAS, plaintiff,
vs.
WILLIAM E. WOODRUFF et al., defendants, } Debt.

And now on this day comes the said plaintiff, by John J. Clendenin, attorney for the State, and the said defendants, by their attorney, Ashley & Watkins, join issue in short, by consent, upon the record to the demurrer of the said plaintiff to the second plea of the said defendants; and thereupon, by consent of parties, with the leave of the court here, it is agreed upon the record that the circuit court here shall hear and determine the matters of law arising upon said demurrer, and upon such determination shall render final judgment upon all the issues joined in this case, as well of fact as of law, to the end that the questions of law arising on said demurrer shall be adjudicated in the supreme court of the State, and upon such adjudication in the supreme court this cause shall be remanded to the said circuit court for the trial of the issues of fact joined therein; and thereupon the said demurrer, and the matters of law arising thereon, comes on to be heard, and is argued by counsel; and the matters of law arising on said demurrer being heard and understood, the court here is of opinion that the matters and things in said second plea stated, in manner and form as therein pleaded, are not sufficient in law to bar or preclude the said plaintiff from having and maintaining her said action thereof against said defendants.

It is therefore considered by the court here that said demurrer be sustained. And thereupon, by consent of parties, the court here proceeds to inquire into the truth of the breaches assigned, and to assess the damages thereby sustained, and doth find that said breach is true as above assessed, and that the said State has sustained damages thereby to the sum of $2395.18, with interest thereon from the 26th day of October, 1837, at 25 per cent. per annum, till paid.

It is therefore considered by the court, that the said State have and recover of said defendants the said sum of three hundred thousand dollars, the penalty aforesaid, with all her costs by her in this suit in this behalf expended, and that she have execution against said defendants for said sum of two thousand three hundred and ninety-five dollars and eighteen cents, the damages aforesaid assessed, with interest thereon at twenty-five per centum per annum from the 26th October, A. D. 1837, until paid, and also all the costs in and about this suit expended.

STATE OF ARKANSAS, *county of Pulaski, sct:*

I, Lemuel R. Lincoln, clerk of the circuit court in and for the county of Pulaski, do hereby certify, that the above and foregoing nine pages contain a true and complete transcript of the record and proceedings in the case therein mentioned.

In testimony whereof I have hereunto set my hand as clerk of said court, and affixed the seal of my office this 1st day of May, A. D. 1840, and in the year of the State the fourth. [L. S.]

LEMUEL R. LINCOLN, *Clerk*.
CHAS. H. WAGNER, *Dep. clerk*.

And afterwards, to wit, on *on* the first day of July, in the year eighteen hundred and forty, James Lawson, jr., as sheriff of Pulaski county, to whom the said writ of summons was addressed, made due return thereof to the said supreme court, and did thereby certify that he executed the same in the city of Little Rock, on the 29th day of April, 1840, by reading the contents thereof, and delivering a true copy thereof to Elias N. Conway, auditor of public accounts of the State of Arkansas, as provided for according to law.

JAS. LAWSON, Jr., *Sheriff.*

And afterwards, to wit, on the eighth day of July, A. D. 1840, at a supreme court of said State, begun and held at the court-house, in the city of Little Rock, on the sixth day of July, eighteen hundred and forty, it being the first Monday in said month, were the following proceedings, to wit:

At this day come the said plaintiff, by their attorneys, Ashley & Watkins, and the defendant, by her attorney, John J. Clendenin, comes also; and on motions of said plaintiffs, by their attorneys, ordered that they have leave to file their assignment of errors in this cause, and thereupon the said assignment of errors is filed; and on further motion the defendant, by her attorney, filed her joinder thereto. Which said assignment of errors is in the following words, to wit:

And the said plaintiffs, by their attorney, Ashley & Watkins, come into court here and say, that there is manifest error in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, in this, to wit: That it appears by the record and proceedings aforesaid sent here, that the said judgment, in form aforesaid given, was given for the said defendant against the said plaintiffs, when, according to the laws of the land, the same judgment ought to have been given for the said plaintiffs against the said defendants; therefore in that there is manifest error.

And the said plaintiffs further say, that there is error in this, to wit: That by the record and proceedings aforesaid it appears that the said circuit court sustained the demurrer of the said defendant to the said second plea of the said plaintiffs, whereas by the law of the land the said circuit court ought to have overruled said demurrer and sustained said plea, and therefore in this it is manifestly erred.

And the said plaintiffs say there is manifest error in this, to wit: That it appears by the record and proceedings aforesaid sent here, that the said circuit court adjudged that the said defendant do have and recover of said plaintiffs the sum of three hundred thousand dollars, the penalty, &c., and that she have execution against said plaintiffs for said sum of two thousand three hundred and ninety-five dollars and eighteen cents, the damages assessed, with interest thereon at twenty-five per centum per annum from the 26th day of October, A. D. 1837, until paid, &c.; whereas by the law of the land such judgment for interest in said sum last mentioned, at the rate of twenty-five per centum per annum, is illegal and oppressive, and any law, or pretended law, au-

thorizing the same, is retrospective, impairing the obligation of contracts, and unconstitutional, and therefore in this it is manifestly erred. And the said plaintiffs pray that the judgment aforesaid, for the errors aforesaid, and other errors being and appearing in the record and proceedings aforesaid, may be in all things reversed, annulled, and set aside, and that the said defendant may rejoin to these errors, &c.

ASHLEY & WATKINS,
Attorney for plaintiffs.

And the said joinder in error is in the following words, to wit:

And the said State, by J. J. Clendenin, attorney for the State, comes and says, that there is no error in the record and proceedings aforesaid, or in the giving the judgment aforesaid, and prays the court here to examine as well the record and proceedings aforesaid assigned for error, and that the judgment aforesaid may be in all things affirmed, &c.

J. J. CLENDENIN, *Att'y for the State.*

And afterwards, to wit, on Thursday, the 27th day of August, A. D. 1840, were the following proceedings, to wit:

This day comes the said plaintiffs, by their attorney, Watkins, and, on his motion, ordered that he have leave to file his written argument in this cause, and the same is filed; and thereupon said plaintiffs, by their said attorney, submit this cause to the court upon said argument on their part.

And afterwards, to wit, on the 27th day of October, A. D. 1840, were the following proceedings, to wit:

This day comes the said defendant, by her attorney, and filed her brief, and thereupon submitted this cause to the court without argument; and it having been on a previous day of this term submitted on the part of the plaintiffs, is now by the court taken under advisement.

And afterwards, to wit, on Tuesday, January 26th, 1841, to which term this cause was continued by operation of law, were the following proceedings, to wit:

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski county, and was argued by counsel, on consideration whereof it is the opinion of this court that there is error in the proceedings and judgment of said circuit court in this cause, in this, to wit: That said court erred in giving judgment against the plaintiffs in error for the twenty-five per centum per annum under the act of the legislature, passed 5th March, A. D. 1838, which purports to impose upon William E. Woodruff, as treasurer of this State, the said twenty-five per centum per annum on the sum of two thousand three hundred and ninety-five dollars, from the 26th of October, 1837, until the same shall be paid over to the Bank of the State of Arkansas, it being contrary to the constitution of this State.

It is therefore ordered and adjudged by this court here, that the judgment of the circuit court of Pulaski county, in this case given, ought to be, and the same is hereby, for the error aforesaid, reversed, annulled,

and set aside, with costs; and this cause be and the same is hereby remanded to said circuit court for further proceedings to be there had therein according to law, and not inconsistent with the opinion here delivered. It is further ordered and adjudged, that the said plaintiffs in error do have and recover against the said defendant in error all their costs in the prosecution of this suit in this court expended.

In testimony that the foregoing is a full, true, and complete transcript of the record of said cause in said supreme court, except the opinion delivered and briefs filed, I, Luke E. Barber, clerk [L. S.] of said supreme court, have hereto set my hand, and affixed the seal of said court, at my office, this day of A. D. 1847.

L. E. BARBER, *Clerk.*

Transcript on second writ of error.

STATE OF ARKANSAS, *in the supreme* [*court:*]

Be it remembered that, at a supreme court of the State of Arkansas, begun and held at the court house, in the city of Little Rock, on the 5th day of January, A. D. 1847, before the Hon. Thomas Johnson, chief justice, the Hon. Williamson S. Oldham, and Hon. William Conway, B. judges, on the 23d day of January, were the following proceedings in the case of—

WILLIAM E. WOODRUFF, CHESTER ASHLEY, EDWARD CROSS, SAM. C. ROANE, PETER T. CRUTCHFIELD, JACOB REIDER, & JAMES D. BAUN, plaintiffs,
vs.
THE STATE OF ARKANSAS, defendant.

Writ of error to Pulaski circuit court.

Be it remembered, that heretofore, to wit, on the 16th day of June, A. D. 1845, the said plaintiffs sued out of the office of the clerk of said supreme court a writ of error, in the following words, viz:

In the supreme court. The State of Arkansas, to the clerk of the circuit court of Pulaski county, greeting:

Because in the record and proceedings, and also in the giving of judgment, in a suit which was in said circuit court, before the honorable Elbert H. English, special judge thereof, between the State of Arkansas, plaintiff, and William E. Woodruff, Chester Ashley, Edward Cross, Sam. C. Roane, Peter T. Crutchfield, Jacob Reider, and James De Baun, defendants, of a plea of debt, manifest error has intervened to the damage of the said defendants, as they allege; you are therefore hereby commanded, that, if final judgment be therein given, you send to the supreme court, under your official seal, the record and proceedings aforesaid, together with this writ, on the first day of the next term of said supreme court of said State, which will be held on the first Monday of July, A. D. 1845, at the court-house in the city of Little Rock, in said State; that the record and proceedings aforesaid being inspected

by said supreme court, it may cause to be done therein what, according to law, ought to be done; and that you return this writ under your official seal.

Witness Luke E. Barber, clerk of said supreme court, who has hereunto set his hand as such clerk, and affixed the seal of said [L. S.] supreme court, at office, this 16th day of June, A. D. 1845, and of the independence of the United States the 69th year.

L. E. BARBER, *Clerk*.

And, at the same time, the said plaintiffs sued out a writ of summons in the following words:

In the supreme court. The State of Arkansas, to the sheriff of Pulaski county, in said State, greeting:

Because in the record and proceedings, and in the giving of judgment, in a suit which was in the circuit court of said county of Pulaski, before the judge thereof, between the State of Arkansas, plaintiff, and William E. Woodruff, Chester Ashley, Edward Cross, Sam. C. Roane, Peter T. Crutchfield, Jacob Reider, and James De Baun, defendants, of a plea of debt, as it is alleged by the said defendants, manifest error has intervened to their great damage; and it being proper that such error, if any, should be corrected, and speedy justice done, you are therefore commanded to summon the said State of Arkansas, that she appear before the said supreme court of the State of Arkansas, at the court house in the city of Little Rock, in said State, on the first day of the next term of said supreme court, which will be held on the first Monday of July, A. D. 1845, to respond to a writ of error issued in said case, and show cause, if any she have, why said judgment should not be reversed, and altogether held for nought; and that you make due return of this writ.

In testimony whereof I have hereunto set my hand, and affixed the seal of my office, at the city of Little Rock, this 16th day of [L. S.] June, A. D. 1845, and of the independence of the United States the 69th year. L. E. BARBER, *Clerk*.

And afterwards, to wit, on the twenty-third day of June, A. D. 1845, William B. Borden, sheriff of Pulaski county, to whom said writ of summons was delivered, made due return thereof, and did certify to said supreme court that he had executed the same by delivering a copy thereof to Elias N. Conway, auditor of the State of Arkansas, on the 17th day of June, A. D. 1845.

And afterwards, to wit, on the seventh day of July, in the year eighteen hundred and forty-five, the clerk of the circuit court of Pulaski county, to whom the said writ of error was directed, made return thereof, with the transcript of the record in said cause thereto attached, as by the said writ he was commanded; which said return is in the following words:

STATE OF ARKANSAS, *County of Pulaski, ss:*

I, Gordon N. Peay, clerk of the circuit court in and for the county aforesaid, do hereby certify, that I have executed the within writ by

making a full, true, and perfect transcript of the record and proceedings in the case therein mentioned, and sending up the same, together with this writ and return, officially certified, to the supreme court of the State of Arkansas.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of my office, at Little Rock, the 2d day of July, A. D. 1845.

GORDON N. PEAY, *Clerk*.
By J. H. HUTCHINGS, *Dep. Clk*.

And the transcript of the record attached to said writ of error is in the following words, to wit:

Pleas had before the honorable Elbert H. English, special judge of the counties composing the fifth judicial circuit of the State of Arkansas, of which the county of Pulaski is one, on the thirteenth day of June, in the year of our Lord one thousand eight hundred and forty-five, in the following entitled case, to wit:

Transcript on 2d writ.

THE STATE OF ARKANSAS,
vs.
WILLIAM E. WOODRUFF, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield. } In debt.

Proceedings had 21st June, 1841.

On this day came the defendants, by their attorney, and filed the order and opinion of the supreme court in this case; and, on motion of said defendants, it is ordered that said opinion be filed, and the said order recorded, on the records of this court; which is done accordingly in the following words, to wit:

STATE OF ARKANSAS, *sct:*

Be it remembered that, at a supreme court, begun and held in and for said State, at the court-house, in the city of Little Rock, on Monday, the fourth day of January, A. D. 1841, the following proceedings were had in this case, on the twenty-sixth day of said month, to wit: Present, the honorable Daniel Ringo, chief justice, the honorable Townsend Dickinson, judge.

WILLIAM E. WOODRUFF, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Saml. C. Roane, and Peter T. Crutchfield, plaintiffs,
vs.
THE STATE OF ARKANSAS, defendant.

Writ of error to Pulaski circuit court.

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski county, and was argued by counsel; on con-

sideration whereof, it is the opinion of this court that there is error in the proceedings and judgment of said circuit court in this cause given, in this, to wit: that said court erred in giving judgment against the said plaintiffs in error for the twenty-five per cent. per annum, under the act of the legislature, passed 5th March, A. D. 1838, which purports to impose upon William E. Woodruff, as treasurer of this State, the said twenty-five per centum per annum, on the sum of two thousand three hundred and ninety-five dollars, from the 26th October, 1837, until the same shall be paid over to the Bank of the State of Arkansas, it being contrary to the constitution of this State. It is therefore ordered and adjudged by the court here, that the judgment of the circuit court of Pulaski county, in this case given, ought to be, and the same is hereby, for the error aforesaid, reversed, annulled, and set aside, with costs; and this cause be, and the same is hereby, remanded to said circuit court for further proceedings to be had therein, according to law, and not inconsistent with the opinion here delivered. It is further ordered and adjudged, that the said plaintiffs in error do have and recover, against the said defendant in error, all their costs in the prosecution of this suit in this court expended.

Proceedings had 24th May, A. D. 1842.

On this day came the parties, by their attorneys, and the court, on motion of the plaintiff, granted leave to amend the declaration in this case on the plaintiffs paying the costs of said amendment; and said plaintiff withdrew her motion to amend, and declined making said amendment.

Proceedings had 27th September, 1842.

On this day come the attorney for the State, and, by leave of the court first had, struck out so much of that portion of their averment in the declaration as relates to the 25 per cent. a month.

Proceedings had 13th June, 1844.

Came George C. Watkins, esq., attorney general, and suggests that, long previous to his appointment, he was counsel for the defendants in this case, and desires not to prosecute, and requests the court to appoint counsel to prosecute in this case. Whereupon it is ordered, that Frederick W. Trapnall, esq., be appointed as such counsel; which appointment is accepted.

Proceedings had 13th June, 1845.

At this day came the parties, by their attorneys, and said plaintiff files her motion for leave to withdraw the replication heretofore filed in this case to the third plea of the said defendants, and for leave to demur thereto; and the court, after hearing the argument of counsel, sustained said motion; whereupon said plaintiff withdrew her said replication, and filed her demurrer to said third plea; to which opinion and decision of the court, the defendants excepted, and tendered to the court their bill

of exceptions thereto; which was signed and sealed by the court, and made a part of the record in this case. And the court, after hearing the argument of counsel upon said demurrer, sustains the same; and thereupon said defendants withdrew the said first plea, and refused to appear further to this action, and say nothing further in bar or preclusion thereof. Wherefore it is ordered by the court, that a jury come to inquire of the truth of the breaches in said declaration, and to assess the damages sustained by reason thereof. And thereupon said defendants, by consent of parties, without waiving any of their exceptions to the previous proceedings in this case, but expressly saving and reserving to themselves all benefit and advantage therefrom, consent and agree that this case shall be submitted to the court, sitting as a jury, to inquire of the truth of the breaches, and assess the damages herein. And the court, the plaintiff consenting thereto, after hearing the evidence, was satisfied of the truth of the breaches in said declaration assigned, and that the said plaintiff hath sustained damage thereby to the sum of three thousand three hundred and fifty-nine dollars and twenty-two cents. It is therefore considered by the court, that the said plaintiff do have and recover of the said defendants the said sum of three hundred thousand dollars, the debt aforesaid, as well as all the costs by her about her said suit in this behalf expended. And it is further considered by the court, that she have execution for the said sum of three thousand three hundred and fifty-nine dollars and twenty-two cents, the damages so assessed as aforesaid, besides all her costs in this behalf expended; and that the said defendant be in mercy, &c.

Pending the assessment of damages, the defendants excepted to certain decisions of the court, and thereupon tendered their bill of exceptions, which is ordered to be filed, and the same is filed accordingly.

THE STATE OF ARKANSAS,
vs.
WILLIAM E. WOODRUFF and others.

In the Pulaski circuit court. May term, 1845.

And the said plaintiff comes and moves the court for leave to withdraw the replication, heretofore filed, to the third plea of said defendants, upon the ground that the interest of the State would be prejudiced and compromitted by the issue on said plea; that said plea is insufficient in law, and no bar to this action.

TRAPNALL.

Filed 13th June, 1845.

G. N. PEAY, *Clerk*.
By J. A. HUTCHINGS, *D. C.*

WILLIAM E. WOODRUFF,
ads.
THE STATE OF ARKANSAS.

In the Pulaski circuit court. May term, 1839.

And the said State comes and says, that the matters and things in said defendants' third plea contained are not good and sufficient in law,

and demurs thereto, and for cause of demurrer assigns: First, that the matters and things in said plea contained cannot be the subject-matter of a set-off in this action. Second, that the indebtedness alleged in said plea is due individually to said Woodruff, and cannot in law be set off against a joint claim against all the defendants. Third, that said plea does not show that the law, as to claims and suits against the State, have been complied with, or any excuse for the failure. All which the plaintiff is ready to verify. Wherefore she prays judgment, &c.

TRAPNALL.

Filed 13th June, 1845.

G. N. PEAY, *Clerk*.
By J. A. HUTCHINGS, *D. C.*

In the Pulaski circuit court. At the April term, 1845.

WILLIAM E. WOODRUFF, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, defendants, adm.
THE STATE OF ARKANSAS, plaintiff.
} Debt on official bond.

Be it remembered that, on the calling of this cause for trial on this day, the said State, by her attorney prosecuting on her behalf, filed her motion in writing, which is here referred to and ordered to form a part hereof, for leave to withdraw her replication heretofore, on the 24th day of March, A. D. 1840, filed in this cause to the third plea of said defendants, which replication is ordered to remain on file and form part hereof, and to file her demurrer to said third plea; and the court here, on hearing of said motion, sustained the same, and allowed said plaintiff to withdraw her said replication, and to file her demurrer to said third plea; to which opinion, judgment, and proceedings of the court here, in sustaining said motion, and allowing said plaintiff to withdraw her said replication, for the purpose of demurring to said third plea, the said defendants excepted at the time, and pray that this their bill of exceptions, in respect thereof, may be signed, and sealed, and filed, and made a part of the record in this cause; which is accordingly done, this 13th day of June, 1845. E. H. ENGLISH, [SEAL.]
Special judge.

Filed 13th June, 1845.

G. N. PEAY, *Clerk*.
By J. A. HUTCHINGS, *D. C.*

In the Pulaski circuit court.—At the April term, 1845.

WILLIAM E. WOODRUFF, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, defendants, adm.
THE STATE OF ARKANSAS, plaintiff.

Debt on official bond.

Be it remembered that, during the progress of this cause, and after the same had been submitted to the court, by consent of parties, to inquire into the truth of the breaches and assess the plaintiff's damages, the said defendants, by agreement of record, not thereby waiving any right or benefit of exception appearing upon the record, upon such inquiry and assessment before the court, the said plaintiff offered in evidence the following letter, having first proven the signature to be that of the said William E. Woodruff, as follows:

TREASURER'S OFFICE, LITTLE ROCK, ARKANSAS,
1st October, 1838.

SIR: In reply to the several inquiries made in your letter of this date, I beg leave to report: 1st. That no payments have been made on any of the notes due from individuals on account of the Seminary lands, since the date of my report on the 31st October, 1837; nor have any of them been renewed since the date of that report. 2d. I have not paid into the principal Bank of the State of Arkansas, to the credit of *the credit of* the State, the sum of $2,100 $\frac{43}{100}$, being amount retained by me as my commission, at ten per cent., on the amount paid into the treasury for redemption of lands, from 12th Sept., 1836, to 31st Oct., 1837, and to which I consider myself [entitled] by law. 3d. Neither have I paid over to the bank the sum of $294 $\frac{75}{100}$, the sum retained by me out of the surplus revenue. That sum was retained by me as a part of the expenses incurred in collecting the portion of the surplus revenue due this State, and I consider it a necessary part of those expenses.

Respectfully, your obt. servant,
WM. E. WOODRUFF.

M. E. N. CONWAY, *Auditor, Little Rock.*

And which was all the evidence offered or adduced by said plaintiff upon the inquiry and assessment aforesaid; to the introduction of which letter the said defendants objected at the time, but the court overruled said objection, and permitted said letter to be read, and thereupon rendered judgment for said plaintiff; to which opinion, judgment, and proceeding of the court, in overruling said objection, and permitting said letter to be read, the said defendants excepted at the time; and pray that their bill of exceptions, in respect thereof, may be signed, and sealed, and filed, and made a part of the record in this cause; which is accordingly done, this 13th day of June, 1845.

E. H. ENGLISH, [SEAL.]
Special judge.

Filed 13th June, 1845.

G. N. PEAY, *Clerk.*
By J. A. HUTCHINGS, *D. C.*

STATE OF ARKANSAS, *County of Pulaski, ss:*

I, Gordon N. Peay, clerk of the circuit court in and for the county aforesaid, do hereby certify, that the foregoing four half sheets, and this

half sheet, contains a full, true, and perfect transcript of the record and proceedings in the case therein mentioned, as the same remains in my office.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of my office, at Little Rock, the 2d day of July, A. D. 1845.

GORDON N. PEAY, *Clerk*.
By J. A. HUTCHINGS, *Deputy clerk*.

And afterwards, to wit, on Wednesday, the sixteenth day of July, A. D. 1845, at a supreme court of the State of Arkansas, begun and held at the court house in the city of Little [Rock,] on the first Monday, being the 7th day of July, A. D. 1845, were the following proceedings, to wit:

At this day come the said plaintiffs by their attorney, and on their motion it is ordered, that their assignment of errors be filed, and thereupon the same is filed; which is in the following words: And the said plaintiffs come and say that, in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: 1st. That said circuit court permitted said State, in violation of her agreement of record, to withdraw her replication to the third plea, and demur thereto. 2d. That said circuit court sustained the demurrer to said third plea. 3d. That said circuit court permitted improper evidence to be introduced on the inquiry of damages. And for these and other errors appearing in said record and proceedings, said plaintiffs pray that the judgment aforesaid may be reversed, &c.

WATKINS & CURRAN.

And afterwards, to wit, on Thursday, July 17th, A. D. 1845, were the following proceedings, to wit:

At this day comes the said defendant by her attorney, and on her motion it is ordered, that her joinder to the plaintiffs' assignment of errors be filed; and thereupon the same is filed. And at the same time come the said plaintiffs by their attorney, and this cause is submitted on the briefs filed, and by the court taken under advisement. Which said joinder in error is in the following words: And the said defendant, by attorney, comes and says, that there is no error in the record and proceedings, or in the giving the judgment aforesaid, and prays that the same may be in all things affirmed.

TRAPNALL.

And afterwards, to wit, on Saturday, January 23d, A. D. 1847, at a term of said supreme court, begun and held at the court house in the city of Little Rock, on the 5th day of January, A. D. 1847, to which term this cause was continued by operation of law, were the following proceedings, to wit:

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski county, and was argued by counsel; on consideration whereof, it is the opinion of the court, that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court, that the judgment of said cir-

cuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered, that said defendant recover of said plaintiffs all her costs in this court in this cause expended, and have execution thereof.

In testimony that the foregoing is a true copy of the record and proceedings of said supreme court in the case therein, except the opinion delivered and briefs filed, I, Luke E. Barber, clerk [L. S.] of said supreme court, have hereto set my hand and affixed the seal of said court, at office, this day of , A. D. 1847.

L. E. BARBER, *Clerk.*

Writ of mandamus.

And whereas, afterwards, to wit, on the twenty-fifth day of February, eighteen hundred and forty, the clerk of said supreme court issued an alternative writ of mandamus as by order of said court he was commanded; which said writ is in the following words:

STATE OF ARKANSAS, *in the supreme court, sct:*

The State of Arkansas, to Frederick W. Trapnall, esq., as attorney, &c., greeting:

Whereas at a supreme court of the State of Arkansas, now sitting, to wit, on the 25th day of February, A. D. 1847, William E. Woodruff, of the county of Pulaski, in said State, filed his petition in said court, reciting, amongst other things, that on the 28th day of January, 1840, the State of Arkansas instituted an action of debt in the Pulaski circuit court against him, the said William E. Woodruff, and his securities, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, upon his official bond as treasurer of said State, for a certain sum of money alleged to have been received by him, as late treasurer of said State, between the 27th day of October, 1836, and the 25th December, 1838; that judgment was rendered against him, and his securities in said suit on his official bond as treasurer, on the 13th day of June, 1845, for the sum of $3,359 22 in damages, and the cost therein, amounting to $49 65; that the attorney general of said State having been of counsel for him in said cause, you were appointed by the circuit court of said county, before the rendition of said judgment, according to the statute in such case made and provided, attorney general pro tempore to conduct and prosecute said suit in behalf of said State, and that you have thence continued and still act as attorney for said State in said cause; that as such attorney you have ordered an execution to be issued upon said judgment; that he, the said William E. Woodruff, did, on the 24th day of February, 1847, at the county aforesaid, tender and offer to pay you the sum of $3,755, in the notes issued by the Bank of the State of Arkansas, pursuant to the charter thereof, for the purpose of circulation, being the full amount of damages, interest, and costs now due on

said judgment, in payment and discharge thereof; but that you so being such attorney, then and there refused, and still refuse to accept, receive, or receipt for said bank notes in payment of said judgment; that he has continued to be and still is ready and willing to pay you as such attorney the said bank notes, in discharge and satisfaction of said judgment, if you will receive the same; and praying for an alternative writ of mandamus to you as such attorney directed, commanding you to accept and receive the said bank notes in payment and discharge of said judgment, or that you show cause why you do not do so.

And whereas our said supreme court did, on the 25th day of February, A. D. 1847, on presentation of said petition, order the clerk of said court to issue an alternative writ of mandamus, to you directed, commanding you, as attorney for said State in said cause, to accept and receive the bank notes in said petition, and the recital of this writ specified, in payment and satisfaction of said judgment, also herein and in said petition set forth, according to the prayer thereof, and receipt for the same, or show cause before our supreme court, now sitting, on the 26th February instant, why you refuse to do so. You are therefore hereby commanded, that you receive and accept in payment and satisfaction of the judgment rendered in the circuit court of Pulaski county, on the 13th day of June, A. D. 1845, in favor of the State of Arkansas against William E. Woodruff, Chester Ashley, Edward Cross, Thomas Thorn, James De Baun, Jacob Reider, Sam. C. Roane, and Peter T. Crutchfield, for the sum of $3,359 22, and costs, the notes of the Bank of the State of Arkansas, upon the tender thereof to you of the full amount of the damages, interests, and costs of said judgment, and that you receipt therefor in full satisfaction of said judgment, or show cause before our supreme court, at the court-house in the city of Little Rock, on the 26th day of February, A. D. 1847, why you refuse to do so; hereof fail not, &c., and have you then and there this writ, and make due return thereof.

In testimony whereof I, Luke E. Barber, clerk of said supreme court, have hereto set my hand and affixed the seal of said [L. S.] court, at my office, in the city of Little Rock, this 25th day of February, A. D. 1847.

L. E. BARBER, *Clerk*.

Filing return.

And afterwards, to wit, on the twenty-sixth day of February, A. D. 1847, were the following proceedings, to wit:

At this day comes Frederick W. Trapnall, to whom the writ of alternative mandamus in this cause was issued, and files in court here his response thereto, which said response is in the following words:

The answer of Frederick W. Trapnall, attorney for the State pro tem., to an alternative mandamus hereto annexed, issued by the supreme court on the petition of William E. Woodruff.

This respondent admits the judgment and tender as set out in the said petition, but alleges that he was not authorized to receive the said

Arkansas State Bank notes; because the 28th section of the bank charter, under which alone the said Woodruff could claim a right so to satisfy the said judgment, was repealed by an act of the Legislature of the State of Arkansas, approved January 10, 1845, and entitled "An act making appropriations for the years 1845, 1846, and part of the year 1844, and for balances due from the State, and for other purposes," and by the 19th section of the said act.

And this respondent submits to the court, if the repeal of the said section does not deprive him of all authority to receive the said bank notes from the said Woodruff in satisfaction of the said judgment in favor of the State of Arkansas against him and others.

Respectfully, FREDERICK W. TRAPNALL.

Filing agreement.

And afterwards, to wit, on the twenty-seventh day of February, A. D. 1847, were the following proceedings, to wit:

At this day come the said plaintiff, by his attorney, and the said defendant in person, and on their motion, it is ordered, that their agreement be now filed and made a part of the record herein, which is now done.

Filing demurrer, joinder, and submission.

And thereupon the said plaintiff files his demurrer to the response of said defendant, filed with the writ herein issued; and thereupon the defendant, by leave of the court, joins in the demurrer filed by said plaintiff, and upon argument thereof this cause is submitted to the court.

Which said agreement so filed and made a part of the record in this cause, is in the following words:

In the supreme court of the State of Arkansas. At January term 1847.

Agreement of record.

In the matter of William E. Woodruff, ex parte, petition for mandamus vs. Frederick W. Trapnall, esq.

Be it remembered, that the following matters are agreed upon by the counsel for the petitioner and respondent in this cause, to the end that the same may be filed and become a part of the record herein.

1st. The record and proceedings in the case of Wm. E. Woodruff, and the said persons named in said petition as his securities, against the State of Arkansas upon the first and second writs of error remaining in this court, and which are referred to in said petition, shall form a part thereof by such reference as fully as though the same were incorporated therein at full length.

2d. That said respondent, as attorney of record for said State in the suit aforesaid, is the proper officer by law to receive and acknowledge satisfaction of said judgment.

3d. That the notes of the bank of the State of Arkansas, referred to

in said petition and response, and tendered in this case, were issued by said bank, pursuant to the charter thereof, prior to the year 1840.

4th. That after the creation of said bank, down to the year 1845, the notes of said bank were received and paid out by said State in discharge of all public dues to and from said State.

5th. That said bank continues to exist with all its corporate functions, and that in the consideration of this case all the acts of the general assembly of said State, affecting said bank, shall be deemed to be public laws, as they have been heretofore decided by this court to be, and whereof this court will judicially take notice; but to the end thereof and for greater certainty, the act of said general assembly, entitled "An act to incorporate the Bank of the State of Arkansas," approved November 2d, 1836, is here inserted at full length, and made part of the record in this cause, and which act of incorporation is in the words following:

An act to incorporate the Bank of the State of Arkansas:

Sec. 1. Be it enacted by the General Assembly of the State of Arkansas, That there shall be established an institution in this State, to be styled "the Bank of the State of Arkansas," with a capital of one million dollars, to be raised by a sale of the bonds of the State, loans or negotiations, the proceeds of which shall constitute said capital, together with such other funds as may now or hereafter belong to, or be placed under the control and direction of the State; that the principal bank shall be located at the city of Little Rock, and the concerns of said bank shall be conducted and controlled under the management of a president and twelve directors, to be appointed by a joint vote of the general assembly, a majority of the whole number in joint vote being necessary to a choice, and to exercise the duties of directors until the regular meeting of the legislature, or until their successors are qualified to act; any seven of whom, with the president, shall constitute a board to do business.

Cap'l $1,000,000
How raised.

Principal bank.
Where located.
President and directors.
How chosen.

How many shall constitute a quorum.

Sec. 2. Be it further enacted, That there shall be a president and nine directors to each branch of said bank, as established by this act, to be elected in the same manner as the president and directors of the principal bank; any five of whom, with the president, shall constitute a board to do business.

Officers of branch banks.
How elected.

Sec. 3. Be it further enacted, That all vacancies by death, resignation or otherwise, shall be filled by the directors until the meeting of the legislature, and that two partners shall not be eligible as directors of said institution at the same time, nor shall a director of any bank, or his partner, be eligible as a director of this institution.

Vacancies to be filled by directors

Partners not eligible as directors

Sec. 4. Be it further enacted, That the president and directors of the principal bank and branches before en-

President and directors to take oath before entering upon duties.

tering upon the exercise of their functions, shall take and subscribe an oath or affirmation before some justice of the peace or judge of the State, for the honest and punctual discharge of his duties as president and director of the Bank of the State of Arkansas or branches, and the due and faithful observance of the provisions of this act.

Shall make and have common seal.

Sec. 5. Be it further enacted, That the president and directors shall have power to make, have, and use a common seal, and the same to break, alter, and renew at pleasure, and generally to do and execute all such matters and things as to them shall appertain under the clauses of this act, or in common course of banking operation.

Directors shall appoint cashier and other officers

They shall appoint their own cashier and fix his compensation, and all other various subordinate agents, officers, and servants deemed necessary for conducting the affairs of the institution.

May deal in bullion, gold, silver, &c.

Sec. 6. Be it further enacted, That the Bank of the State of Arkansas may deal in bullion, gold and silver coin, promissory notes, mortgages, bills of exchange, public stock, or any collateral security that may appear expedient to the president and directors, in their discretion, and under their official charge and responsibility.

Shall not issue notes of less denomination than $5.

Provided, that no note, bill, or draft shall be for a less denomination than five dollars, and that the gross amount of its emissions, payable on demand, shall not exceed triple the capital of said bank actually paid in.

May purchase or lease property. Erect buildings.

Sec. 7. Be it further enacted, That the president and directors of the Bank of the State of Arkansas and branches may purchase or lease real property, and cause to be erected all necessary buildings, conveniences, and securities for said bank and branches; and debts, claims, or demands, shall be presented, [prosecuted,] and recovered in the name of said bank, for the use and benefit of said institution; and shall have power to make and alter at pleasure all necessary orders, ordinances, and by-laws for the security and good government of said bank and branches.

Shall have power to make ordinances, by-laws.

May issue notes, &c. as soon as fifty thousand dollars paid into vault.

Sec. 8. Be it further enacted, That the principal bank may proceed to issue notes, bills, or liabilities so soon as there is paid into the vault fifty thousand dollars in legal coin, and no branch shall be put into operation with a less sum; but it shall be the duty of the president and directors of the principal bank to put into operation a branch of said institution for every fifty thousand dollars additional capital paid in, until all the branches, as provided for by this act, is (are) in operation; and the said president and directors of the principle bank shall so conduct their operations as to have on hand at all times, a sufficient ef-

Shall establish branches for every fifty thousand dollars paid in.

fective capital to pay in specie every probable demand upon their institution.

Sec. 9. Be it further enacted, That the said bank or branches shall not take more than eight per centum per annum upon any of its loans or discounts, nor shall it take more than seven per centum per annum on loans or discounts payable within eight monhts, nor more than six per cent. per annum on any loan or discount payable within four months after such loans or discounts.

Eight per cent. upon loans, seven per cent. and six per cent.

Sec. 10. Be it further enacted, That whenever it shall be found that either of the branches, as established by this act, does not declare a dividend of six per cent. per annum, upon the vested capital therein, the said branch shall be withdrawn, and all its effects transferred to the principal bank, as soon as the interest of the institution will admit of it.

Branch not declaring dividend of six per cent to be withdrawn.

Sec. 11. Be it further enacted, That there shall be established two branches of the Bank of the State of Arkansas, to wit, one at Batesville, and one at the town of Fayetteville, and the capital of each shall be three hundred thousand dollars: Provided, however, That the said branches shall not be entitled to receive their whole capital until the whole capital stock of the institution is paid in, as is hereinafter provided, but shall receive such proportions thereof as the capital stock bears to the whole capital of said bank, as established by this act.

Two branches to be established.

Sec. 12. Be it further enacted, That the branches hereby established shall not be under the direction and government of the principal bank, but the president and directors of each branch shall be the judge of, and have entire control over, the business belonging to each branch, so far as relates to the signing and emitting of notes, the extent of loans to be made, purchasing of exchange and the deposites of funds: Provided, The same is not to the injury of the general interest of the institution; and provided further, that nothing herein contained shall be construed to diminish the powers or privileges belonging to the central board of directors as is hereinafter provided.

Branch to be under the control of its own officers.

Sec. 13. Be it further enacted, That the funds arising from the sale of the Seminary lands, the five per centum on the sales of public lands, and the amount due and coming to the State under the act of Congress distributing the surplus revenue among the several States, with all other funds in which the State is concerned, shall be deposited in the principal bank and constitute a part of the capital thereof; and whatever dividends the said bank declares shall be carried to the credit of the specific fund so deposited in said bank; and all the dividends on the capi-

What funds shall be deposited in bank.

Dividends declared; how credited.

President and directors to take oath before entering upon duties.

tering upon the exercise of their functions, shall take and subscribe an oath or affirmation before some justice of the peace or judge of the State, for the honest and punctual discharge of his duties as president and director of the Bank of the State of Arkansas or branches, and the due and faithful observance of the provisions of this act.

Shall make and have common seal.

Sec. 5. Be it further enacted, That the president and directors shall have power to make, have, and use a common seal, and the same to break, alter, and renew at pleasure, and generally to do and execute all such matters and things as to them shall appertain under the clauses of this act, or in common course of banking operation.

Directors shall appoint cashier and other officers

They shall appoint their own cashier and fix his compensation, and all other various subordinate agents, officers, and servants deemed necessary for conducting the affairs of the institution.

May deal in bullion, gold, silver, &c.

Sec. 6. Be it further enacted, That the Bank of the State of Arkansas may deal in bullion, gold and silver coin, promissory notes, mortgages, bills of exchange, public stock, or any collateral security that may appear expedient to the president and directors, in their discretion, and under their official charge and responsibility.

Shall not issue notes of less denomination than $5.

Provided, that no note, bill, or draft shall be for a less denomination than five dollars, and that the gross amount of its emissions, payable on demand, shall not exceed triple the capital of said bank actually paid in.

May purchase or lease property. Erect buildings.

Sec. 7. Be it further enacted, That the president and directors of the Bank of the State of Arkansas and branches may purchase or lease real property, and cause to be erected all necessary buildings, conveniences, and securities for said bank and branches; and debts, claims, or demands, shall be presented, [prosecuted,] and recovered in the name of said bank, for the use and benefit of said institution;

Shall have power to make ordinances, by-laws.

and shall have power to make and alter at pleasure all necessary orders, ordinances, and by-laws for the security and good government of said bank and branches.

May issue notes, &c. as soon as fifty thousand dollars paid into vault.

Sec. 8. Be it further enacted, That the principal bank may proceed to issue notes, bills, or liabilities so soon as there is paid into the vault fifty thousand dollars in legal coin, and no branch shall be put into operation with a less sum;

Shall establish branches for every fifty thousand dollars paid in.

but it shall be the duty of the president and directors of the principal bank to put into operation a branch of said institution for every fifty thousand dollars additional capital paid in, until all the branches, as provided for by this act, is (are) in operation; and the said president and directors of the principle bank shall so conduct their operations as to have on hand at all times, a sufficient ef-

fective capital to pay in specie every probable demand upon their institution.

Sec. 9. Be it further enacted, That the said bank or branches shall not take more than eight per centum per annum upon any of its loans or discounts, nor shall it take more than seven per centum per annum on loans or discounts payable within eight monhts, nor more than six per cent. per annum on any loan or discount payable within four months after such loans or discounts.

Eight per cent. upon loans, seven per cent. and six per cent.

Sec. 10. Be it further enacted, That whenever it shall be found that either of the branches, as established by this act, does not declare a dividend of six per cent. per annum, upon the vested capital therein, the said branch shall be withdrawn, and all its effects transferred to the principal bank, as soon as the interest of the institution will admit of it.

Branch not declaring dividend of six per cent to be withdrawn.

Sec. 11. Be it further enacted, That there shall be established two branches of the Bank of the State of Arkansas, to wit, one at Batesville, and one at the town of Fayetteville, and the capital of each shall be three hundred thousand dollars: Provided, however, That the said branches shall not be entitled to receive their whole capital until the whole capital stock of the institution is paid in, as is hereinafter provided, but shall receive such proportions thereof as the capital stock bears to the whole capital of said bank, as established by this act.

Two branches to be established.

Sec. 12. Be it further enacted, That the branches hereby established shall not be under the direction and government of the principal bank, but the president and directors of each branch shall be the judge of, and have entire control over, the business belonging to each branch, so far as relates to the signing and emitting of notes, the extent of loans to be made, purchasing of exchange and the deposites of funds: Provided, The same is not to the injury of the general interest of the institution; and provided further, that nothing herein contained shall be construed to diminish the powers or privileges belonging to the central board of directors as is hereinafter provided.

Branch to be under the control of its own officers.

Sec. 13. Be it further enacted, That the funds arising from the sale of the Seminary lands, the five per centum on the sales of public lands, and the amount due and coming to the State under the act of Congress distributing the surplus revenue among the several States, with all other funds in which the State is concerned, shall be deposited in the principal bank and constitute a part of the capital thereof; and whatever dividends the said bank declares shall be carried to the credit of the specific fund so deposited in said bank; and all the dividends on the capi-

What funds shall be deposited in bank.

Dividends declared; how credited.

tal stock of said bank shall in like manner belong to the State, subject to the control and disposal of the legislature: Provided, The trustees of the seminary and school lands, and the individuals legally qualified, may at all times, when they require, be allowed to withdraw the principals and interest thereon of the funds so deposited.

President shall not be indebted exceeding $5000.

Director not to exceed $10,000.

Sec. 14. Be it further enacted, That the president of the principal bank and branches shall not be indebted as endorser, security, or principal, in said institution in any sum exceeding five thousand dollars; and that no director shall in like manner exceed the sum of ten thousand dollars; and should either one of the presidents or directors become insolvent or violate any part or provision of this act, his place shall be filled by the directors so elected, until the meeting of the general assembly.

General board to consist of the president and two directors from each branch.

Shall meet semi-annually.

Sec. 15. Be it further enacted, That from the date of the commencing of business by said bank and branches there shall be a general board, to consist of the president and two directors of the principal and each of the branches, to be chosen by each respectively, who shall meet semi-annually at the banking house of the principal bank; the president of the principal bank to be president of the general board; and in case of his absence, the board to choose a president pro tempore; and it shall be the duty of the cashier of the principal bank to attend the general board, and keep a regular account of all its acts and proceedings; and the general board shall possess a revising and controlling power over the acts and proceedings of the principal bank and branches, so far as may be necessary and proper for preserving a common concert of operation with a view to the credit and welfare of the several banks. It shall attend to the payment of the interest, as it becomes due, on the bonds or certificates, and the negotiation of loans, and shall finally settle and control all the general accounts of the bank, and ascertain and strike the dividends of the profits semi-annually, as well for the said principal bank, as for each of the branches, according to their operation respectively; and shall be capable of exercising such other powers for the well governing and ordering the affairs of the said banks, as they shall deem necessary and proper to advance their interest: Provided, The same be not contrary to any of the provisions of this charter or laws of the State; and provided, also, that the said principal bank and each of the branches shall be severally distinct and separate, with reference to profits and liabilities, so that each may receive an equitable distribution of the clear gains.

Power of general board.

Orphans' or minors' funds to be

Sec. 16. Be it further enacted, That on application made to the principal bank or branches, by any one hav-

ing the control of the funds belonging to orphans or minors, it shall be the duty of the president and directors to receive the same, and pass the amount to the credit of the proper party, together with such semi-annual dividends as shall be made on the capital stock of said bank. And any executor, administrator, or guardian, may invest in like manner any sum they may think proper for safe keeping and interest of the heirs at law: Provided, The same shall in all cases be for a period of twelve months, to entitle the parties to a dividend as other stock belonging to said institution.

passed to credit of proper parties.

Executor or administrator may invest funds.

Sec. 17. Be it further enacted, That in order to facilitate the president and directors of the said Bank of the State of Arkansas in negotiating the sales of the bonds and obtaining the loans, as specified in the first section of this act, which is to form the capital thereof, the faith and credit of the State is hereby pledged for the payment of the principal and interest of the said sum of one million of dollars; and the governor is hereby authorized and empowered to sign, and the treasurer to countersign, under the seal of the State, one thousand bonds of one thousand dollars each, bearing interest at the rate of five per cent. per annum, payable semi-annually, and redeemable in fifty years; said bonds to be in the following words, to wit:

To facilitate operations, &c.

Faith and credit of State shall be pledged.

Governor shall sign bond.

Treasurer shall countersign.

Bonds to bear interest.

One thousand dollars.

Form of bond.

Know all men, that the State of Arkansas acknowledges to be indebted to the president and directors of the Bank of the State of Arkansas in the sum of one thousand dollars, which sum the said State of Arkansas promises to pay in current money of the United States, to the order of the president and directors of said bank, on the——— day of———with interest, at the rate of five per cent. per annum, payable half yearly at the place named in the endorsement hereto, on the first day of———and——— of each year, until the payment of said principal.

In testimony whereof, the governor of the State of Arkansas has signed, and the treasurer of the State has countersigned, these presents, and caused the seal of the State to be fixed thereto, at Little Rock, this——day of ——in the year of our Lord one thousand eight hundred and——

which said bonds may be transferred by the endorsement of the president and cashier of said bank to the order of any person whomsoever; and the said endorsement shall fix the place where the principal and interest shall be paid, and all the expenses attending the issuing the said bonds shall be paid out of any moneys in the treasury of the State not otherwise appropriated.

Bonds may be transferred.

Expenses attending issuing said bonds to be out of treasury.

Salary of the president of principal bank and branches.

Sec. 18. Be it further enacted, That the president of the principal bank shall receive a salary of fifteen hundred dollars, and those of the branches twelve hundred dollars per annum, in full compensation for their services, except such expenses as shall be incurred in visiting the general board, agreeable to the provisions of the fifteenth section of this act; which sum, with the amount expended by the directors authorized to accompany the said presidents, shall be paid by the order of the general board, with such compensation for their services as shall be agreed on by the general board.

Shall be deemed felony to counterfeit any note or writing of bank.

Penalty and forfeiture.

Sec. 19. Be it further enacted, That it shall be deemed and taken to be felony to forge or counterfeit any note, emission, certificate, power of attorney, or other writing, engraving, or document, authorized by, or proceeding from, or relating to the concerns of this act; and every person so offending, and being convicted thereof, shall suffer the like pains, penalties, and forfeitures, as are attached to the forging and counterfeiting of bank notes in this State.

Portion of the disposable means of bank and branches to be graduated to each county.

Sec. 20. Be it further enacted, That a portion of the disposable means of the State bank and branches shall be employed, graduated, and extended to the several counties in this State, in proportion to the representation of each county, should the same be required; and the president and directors of the principal bank and branches are hereby required to employ, graduate, and extend the same to each county, under the direction and control of the general board, who may direct loans to be made upon the security of real estate, at a rate of interest not exceeding eight per centum per annum: Provided, It shall not exceed one-half, nor less than one-fourth, of said means, on good and sufficient pledges being made as hereinafter provided.

When money is loaned upon real estate, may renew.

Sec. 21. Be it further enacted, That in all cases where money is loaned on the security of real estate, the person or persons to whom such loans or discounts shall have been made, shall be allowed at the end of twelve months to renew the said bonds or notes for twelve months longer, during the space of five years from the date of their respective bonds or discounts: Provided, They pay and reimburse at the time of each renewal one-fifth part of the whole sum originally loaned or discounted to them, as well as the interest upon the sums for which their said bonds shall thus be received; so that, at the expiration of the said five years, the whole sum loaned or discounted to them, together with the interest thereof, shall be entirely paid and extinguished: Provided, however, That

no mortgage shall be taken upon land which is not in a state of cultivation, with an unencumbered fee simple title, or an equitable title, founded on a certificate of entry at some land office within this State, and that no more than one-half of the nett value of real property to be mortgaged shall be lent by the said bank or branches upon the same.

Mortgage not to be taken upon land not in state of cultivation.

Sec. 22. Be it further enacted, That there shall not be loaned or discounted in any of the branches or principal bank, either directly or indirectly, to any individual, company, or corporation, a greater sum than ten thousand dollars.

Not more than $10,000 to be loaned to any one person.

Sec. 23. Be it further enacted, That on all mortgages executed under this act the said institution shall have the right to seize the property mortgaged in whatever hands it may be, in the same manner and with the same facilities that it could be seized in the hands of the mortgagee, notwithstanding any sale or change in the title or possession thereof, by descent or otherwise.

Mortgaged property shall be liable to seizure wherever found.

Sec. 24. Be it further enacted, That if any person having obtained a loan from said institution, secured by mortgage as aforesaid, shall make a surrender of his property to his creditors, the said mortgaged property shall not thereby pass, except upon payment of the debt due to said institution, and secured thereon; but it shall be lawful for the said institution to proceed by an order of seizure and sale against the said property, in the same manner as if no surrender had been made; and the surplus only of the proceeds of sale, after paying the debts due to said institution and costs, shall be paid over to the proper party.

Person obtaining loan shall not pass away his property.

Sec. 25. Be it further enacted, That it shall be the duty of the general board to furnish the legislature, within the first ten days of the session, with statements of the amount of debts due to the institution, the amount of capital stock, of the money deposited therein, of the notes in circulation, and of the cash on hand; and the legislature shall have a right to inspect such general accounts on the books of said institution as shall relate to said statement, should they deem it necessary.

Duty of general board to furnish legislature with statement.

Sec. 26. Be it further enacted, That bills obligatory and of credit, under the seal of the institution, or signed by the president and cashier, shall be assignable by endorsement thereupon, and vest the property in each and every assignee or assignees successively, and fully to enable such assignee or assignees to bring and maintain an action thereupon in his, her, or their own name or names.

Bills obligatory and of credit may be assigned.

Cashier to give bond.

Sec. 27. Be it further enacted, That every cashier, before he enters on the duties of his office, shall be required to give bond, with two or more securities, to the president and directors by whom he may be chosen, in a sum not less than fifty thousand dollars, with conditions for his good behavior and faithful performance of duty.

Bills and notes to be received in payment of debts due the State.

Sec. 28. Be it further enacted, That the bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas.

General board shall apportion amount among the several counties.

Sec. 29. Be it further enacted, That, at the first meeting of the general board, and every twelve months thereafter, it shall be the duty of said board to apportion the amount among the several counties of this State, agreeable to their representation, due notice of which shall be given in the several newspapers published in this State; and if any county fails, within thirty days from the date of said publication, to take the same, then, and in that case, it shall be loaned out to any other county applying for the same, for a term not exceeding eleven months: Provided, application is made by the county entitled to the same; and in that event it shall be loaned to the said county at the expiration of the eleven months.

The amount of loans, discounts, &c., shall never exceed three times the amount of capital.

Sec. 30. Be it further enacted, That the amount of all loans, discounts, or advances, which it shall be lawful for said bank to make, shall never exceed three times the amount of its effective capital, and the profits actually realized and retained; nor shall the said bank ever issue its notes, or in any way be responsible for more than three times the amount of its capital, exclusive of deposites: Provided, That all deposites made therein for a term of years, shall be considered as part of the effective means of said bank.

Bank shall pay notes signed by president and cashier.

Sec. 31. Be it further enacted, That the notes of said institution, signed by the president and cashier, promising to pay in money to any person, or order, or to bearer, shall be obligatory on said institution, though they should not have the seal thereof; and any of said notes, payable to order, shall be transferable and negotiable by endorsement, and those payable to bearer shall be negotiable and transferable by delivery.

President of principal bank to call meeting before 1st Dec., 1836.

Adopt measures to negotiate bonds.

Sec. 32. Be it further enacted, That it shall be the duty of the president of the principal bank to call a meeting of the board of directors on or before the first day of December, eighteen hundred and thirty-six, and make such arrangements and adopt such measures as they may deem expedient and best, to negotiate the State bonds of one million of dollars: Provided, par value can be obtained for the same; and to select some fit and pro-

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per person as an agent on the part of the institution to negotiate said bonds, and to do and perform all other matters and things, under the instruction of said president and directors, to put into operation said institution agreeably to this charter. Appoint person as agent.

Sec. 33. Be it further enacted, That it shall be the duty of the treasurer of this State, on receipt of the first deposites made by the Secretary of the Treasury of the United States of the surplus revenue, under the provision of an act of Congress entitled "An act to regulate deposites of public money," approved June twenty-third, eighteen hundred and thirty-six, to give notice to the president of the principal bank, whose duty it shall be to convene the board of directors, and to adopt such measures as to them seem best for the interest of the State and said institution, and receipt to the treasurer for the whole or any part thereof, and apply the same as they may deem necessary to promote the interest of said institution and public good, in strict accordance with this charter, and all acts or laws in relation to the same. Treasurer of State, on receipt of deposites of public money, shall give notice to president of bank.

Sec. 34. Be it further enacted, That if any person or persons shall be indebted to said institution, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at the said bank, and shall delay payment thereof, it shall be lawful for the president of the bank, or of any branch, as the case may require, after having given thirty days' notice thereof, to move the circuit court of the county where said bank is established, or of the county where the branch may be, as the case may require, on producing to the said court, before whom the motion is made, the certificate of the president of the bank, or of the branch, (as the case may be,) that the debt is real and bona fide the property of the bank, for judgment. Person delaying payment, bank may move circuit court for judgment.

JOHN WILSON,
Speaker of the House of Representatives.
SAM. C. ROANE,
President of the Senate.

Approved, Nov. 2d, 1836.

J. S. CONWAY.

And which agreement, being signed by and on behalf of the respective parties in this cause, is prayed to be filed and made a part of the record in this cause.

WATKINS & CURRAN,
For petitioner.
TRAPNALL,
Atto. pro tem. for the State.

February 27th, 1847

Demurrer.

And said demurrer, to the return to the writ in this case, is in the following words:

And the said petitioner, by attorney, comes, &c.; and, as to the response of said respondent by him above thereof pleaded to said writ, says, that the same, and the matters and things therein set up, are not sufficient in law to bar the action of said writ, and show no sufficient answer or excuse thereto why he doth not obey the command of said writ; and the said petitioner doth demur in law thereto; and, for cause of such demurrer, the said petitioner specially assigns and shows to the court here the following, to wit: 1st. That the 19th section of said act entitled "an act making appropriations for the years 1845, 1846, and part of the year 1844, and for balances due from the State, and for other purposes," approved January 10th, 1845, is a law impairing the obligation of contracts, and is repugnant to the constitution of this State and of the United States, and therefore void. 2d. That by the law of the land, and upon the facts disclosed upon the record in this cause, the said respondent is in duty bound to accept the tender aforesaid in satisfaction of said judgment. And this the said petitioner is ready to verify. Wherefore, and for want of any sufficient response to said writ, the said petitioner prays judgment, and that writ be made absolute.

WATKINS & CURRAN,
For petitioner.

And afterwards, to wit, on Wednesday, the twenty-first day of July, eighteen hundred and forty-seven, at a supreme court of said State, begun and held on the first Monday of July, to which day this cause was continued by operation of law, were the following proceedings, to wit:

Filing motion for supersedeas.

At this day comes the said plaintiff by his attorney, and files his motion for a supersedeas of the judgment in the petition in this case set forth; which said motion is by the court taken under advisement. And said motion is in the following words, to wit: And said Woodruff, by attorney, comes and represents, and shows to the court here, that said Trapnall, as such attorney for the State, has ordered and directed an execution to be issued upon the judgment mentioned in the petition in this behalf, and, unless restrained therefrom, said judgment will be executed before a decision can be had herein. Wherefore said Woodruff moves the court here to grant a writ of supersedeas, or to make an order staying and suspending the execution of said judgment until this cause shall be heard and determined.

WATKINS & CURRAN.

And afterwards, to wit, on the said twenty-eighth day of July, in the year aforesaid, were the following proceedings, to wit:

Order overruling demurrer.

The court being sufficiently advised of the matters of law arising upon the demurrer of the said plaintiff to the return of said defendant, filed

with the alternative writ of mandamus in this case issued, and being of opinion that said return shows a valid legal cause for his refusal to obey the mandate of said writ, it is therefore ordered that said demurrer be and it is hereby overruled.

Final judgment.

And the said plaintiff declining to make other answer to said return, it is thereupon considered by the court, that said defendant go hence without day, and recover of said plaintiff all his costs herein incurred, and have execution thereof.

And thereupon the Hon. Thomas Johnson, chief justice, filed the opinion of the court in this cause, which is in the following words:

Opinion.

The fate of the present application must necessarily depend upon the views of this court relative to the constitutionality of the eleventh section of the Revenue law, passed at the session of 1845, as affecting the contract under consideration. That statute provides, "that from and after the fourth day of March, eighteen hundred and forty-five, nothing shall be received in payment of taxes or revenue due the State, but par funds; (which is understood in this act to mean current money of the United States,) or treasury warrants of this State: Provided, however, that this act shall not prevent sheriffs, or collectors, who have had relief by special acts, from paying into the treasury such funds as were received from the other collectors, on the tenth day of December, eighteen hundred and forty-five." By this act the twenty-eighth section of the act incorporating the Bank of the State of Arkansas, passed in A. D. 1836, was repealed, by which it was declared, "that the bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas." It is objected that the act of 1845 is a law impairing the obligation of contracts, and that therefore it is repugnant to the Constitution of the United States, and void. This brings us to the only question really involved, and that is, whether the act of 1845 so operated as to impair any obligation imposed by the contract in this case. It will be conceded that the entire debt accrued prior to the passage of the repealing act; and that the petitioner had an undoubted right to discharge it at any time before the repeal in bills or notes of the State Bank, we think, cannot, for a moment, admit of doubt. But did the act of 1836 so incorporate itself into the contract as to become a part of it, and to fix and vest a right in the petitioner to discharge it in the kind of funds specified in that act? If such was the legal effect and operation of it, then it is clear that the doctrine contended for is not only sound in principle, but that it is conclusive upon the question, and the necessary result is, that the legislature possessed no power to divest that right by a repeal of the act. We think that a single observation, touching the consequences which might very naturally flow from this mode of reasoning, will be fully sufficient to expose its utter fallacy. The act, by which the State Bank was created, was nothing more than a grant of power for certain

purposes therein specified, which was exclusively under the control of the legislature; and, consequently, subject to be repealed at any time whenever, in the wisdom of that body, it should seem expedient for the good of the country. Suppose that, instead of merely modifying the charter and placing the bank in liquidation, they had conceived a total repeal better calculated to subserve the interests of the community.

Upon the passage of the act abolishing the charter, that moment would the entire circulation of that institution have become wholly valueless; and, as a necessary consequence, it would in effect have operated as an extinguishment of the debt. The act relied upon, by which the debtors of the State were permitted to make payment in the bills or notes of the State Bank, was a mere gratuity, and of course liable to be revoked and withdrawn at any time when it should suit the purposes of the power that conferred it. If this position be correct, then it clearly results that the privilege of paying debts due the State in bills and notes of the bank, was only conferred upon the implied condition that such debts should be paid before the repeal of the law; but, if delayed till after that event, in the absence of any saving in the repealing act, they could be discharged alone in the constitutional currency of the country. It has been urged in the argument, that there are circumstances connected with this case which entitle it to the favorable consideration of the court; and, that in case any doubt should finally remain in relation to the law, that those circumstances ought to cause the scale to preponderate in favor of the petitioner. Upon this subject we can only say, that, if such facts as represented do exist, they should appeal strongly to the magnanimity and sense of justice of the legislature for at least partial relief; but, that sitting as a court of law, and bound to act in accordance with strict technical rules, we do not feel at liberty to consider of them, and to give them that weight to which in strict justice they may possibly be entitled. We think, therefore, that the answer of the State is fully sufficient in law, and that the demurrer to it ought to be overruled. The demurrer is therefore overruled.

And afterwards, to wit, on the twenty-ninth day of July, in the year aforesaid, were the following proceedings, to wit:

Affidavit as to amount in controversy.

At this day comes the said plaintiff, by his attorney, and it is ordered that the affidavit of George C. Watkins, as to the amount of the matter in dispute in this cause, be filed, and thereupon the same is filed. And said affidavit is in the following words, to wit:

I, George C. Watkins, do state on oath, that the matter in dispute in the above entitled cause exceeds the sum of two thousand dollars, exclusive of costs.

GEO. C. WATKINS.

Sworn to and subscribed, in open court, this 29th day of July, A. D. 1847.

Test: L. E. BARBER, *Clerk*.

And afterwards, to wit, on the thirtieth day of July, in the year aforesaid, the said plaintiff, presenting to the clerk of said supreme court a writ of error, issued by the clerk of the district court of the United States, for the district of Arkansas, and allowed by Thomas Johnson, chief justice of the supreme court of the State of Arkansas, filed his appeal bond herein, which is in the following words:

Appeal Bond.

Know all men by these presents, that we, William E. Woodruff, as principal, and George C. Watkins and Chester Ashley, as securities, are held and firmly bound, unto Frederick W. Trapnall, in the just and full sum of two hundred dollars, to be paid to the said Frederick W. Trapnall, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 30th day of July, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas lately, at a term of the supreme court of the State of Arkansas, begun and held at the city of Little Rock, in said State, in a suit depending in said court, between William E. Woodruff, petitioner, and Frederick W. Trapnall, defendant, final judgment was rendered against the said William E. Woodruff; and the said William E. Woodruff having obtained a writ of error, and filed a copy thereof in the clerk's office of said supreme court to reverse the judgment in the aforesaid suit; and a citation directed to the said Frederick W. Trapnall, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday in December next.

Now, the condition of the above obligation is such, that if the said William E. Woodruff shall prosecute said writ of error to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WM. E. WOODRUFF, [SEAL.]
CHESTER ASHLEY, [SEAL.]
GEO. C. WATKINS. [SEAL.]

Signed, sealed, and delivered in the presence of—
L. E. BARBER.

Approved by— THOMAS JOHNSON,
Chief justice of the supreme court of the State of Arkansas.

Filing copy of writ of error.

And said plaintiff, at the time of presenting to the clerk here the writ of error aforesaid, filed a true copy thereof, which is in the words following, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the chief justice and
[L. S.] associate judges of the supreme court of the State of Arkansas, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said supreme court of said State before you, between William E. Woodruff and Frederick W. Trapnall, a manifest error hath intervened, to the great damage of the said William E. Woodruff, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 29th day of July, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second year.

Attest: WM. FIELD, *Clerk*.
By A. H. RUTHERFORD, *Dep'y cl'k*.

Allowed by— THOMAS JOHNSON,
Chief justice of the supreme court of the State of Arkansas.

In pursuance of the mandate of said writ of error, and the allowance thereof by the said chief justice of our supreme court, a record of the judgment aforesaid, with all things thereunto relating, together with said writ of error annexed, is hereby transmitted to the Supreme Court of the United States accordingly.

STATE OF ARKANSAS, *in the supreme court, set:*

In testimony that the foregoing sixty-three pages contain a full, true, and complete transcript of the record and proceedings of said supreme court in the case in the caption thereof stated, I,
[L. S.] Luke E. Barber, clerk of said supreme court, have hereto set my hand and affixed the seal of said supreme court, at my office, in the city of Little Rock, this eleventh day of October, A. D. 1847.

L. E. BARBER, *Clerk*.

Citation.

UNITED STATES OF AMERICA, *to wit:*

To Frederick W. Trapnall, esq., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Arkansas, wherein William E. Woodruff is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Johnson, chief justice of the supreme court of said State of Arkansas, this 29th day of July, in the year of our Lord 1847.

THOMAS JOHNSON,
Chief Justice of Arkansas.

I, Frederick W. Trapnall, the within named defendant in error, do hereby acknowledge due and legal service of the within citation, by a true and correct copy thereof delivered to me on behalf of the within named plaintiff in error, at the city of Little Rock, in the State of Arkansas, this 21st day of October, 1847.

F. W. TRAPNALL.

STATE OF ARKANSAS, *to wit:*

I, George C. Watkins, being first duly sworn, do state on oath, that on this 21st day of October, 1847, at the city of Little Rock, in said State, acting for and on behalf of the within named William E. Woodruff, I executed and served the within citation, by then and there delivering a true and correct copy thereof to the within named Frederick W. Trapnall.

GEORGE. C. WATKINS.

Sworn to and subscribed by the above George C. Watkins before me, Luke E. Barber, clerk of the supreme court of the State of Arkansas, this 21st day of October, A. D. 1847, at my office, in said State.

Test: L. E. BARBER, *Clerk.*

Mandamus.

In the supreme court of the State of Arkansas, at the July term, 1847.

In the matter of—

WILLIAM E. WOODRUFF, plaintiff,
vs.
FREDERICK W. TRAPNALL, defendant.

And the said plaintiff, praying for the allowance of a writ of error from the Supreme Court of the United States to the final judgment and decision rendered by said supreme court of said State, at and during

this present term thereof in said cause, by his attorney, says, that in the record and proceedings aforesaid, and in the giving the judgment aforesaid in said cause, manifest error hath intervened, and for assigning such error, he says:

1st. That said supreme court of said State overruled the demurrer of said plaintiff to the response of said defendant to said writ of mandamus.

Whereas the 11th and 19th sections of said act of the General Assembly of said State, entitled "An [act] making appropriations for the years 1845, 1846, and part of the year 1844, and for balances due from the State, and for other purposes," approved January 10th, 1845, is a law impairing the obligation of contracts, and is repugnant to the Constitution of said State, and of the United States, and therefore void.

And whereas by the laws of the land, and upon the facts disclosed upon the record in this cause, the said defendant is in duty bound to accept the tender aforesaid in satisfaction of said judgment.

And whereas by the law of the land, said demurrer to said response ought to have been sustained, and said response adjudged insufficient.

2d. That the judgment aforesaid of said supreme court of said State, in form aforesaid rendered, is in favor of said defendant, and against said plaintiff; whereas by the law of the land, such judgment ought to have been given in favor of said plaintiff, and against said defendant.

Wherefore, and for other manifest errors apparent under said record, the said plaintiff prays that upon such writ of error, the judgment aforesaid of said supreme court of said State may be reversed, set aside, and held for naught, and he restored to all things he hath lost by occasion thereof, and that said defendant may rejoin to these errors.

WATKINS & CURRAN,
Attorneys for Plaintiff.

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